

## Appendix 9: Amended and Restated Memorandum of Understanding

Signed October 30, 2009

Amended and Restated Memorandum of Understanding between Patriot Partners  
Lexington LLC and 200 Patriot Way LLC (individually and collectively, the “Applicant”)  
and the Town of Lexington, Massachusetts (“Town”)

October 30, 2009

The Applicant has filed for a zoning amendment to the PSDUP which was previously approved by the Town of Lexington Town Meeting in May 2004 (hereinafter, the “Original PSDUP”) for the Applicant’s property known as “Lexington Technology Park” located at 125, 131, 141 Spring Street (N/K/A 125 Spring Street, 200, 300, 400, and 500 Patriot Way) (collectively, the “Property”). This proposed zoning amendment to the Original PSDUP and Definitive Site Development and Use Plan (hereinafter as amended referred to as, the “Amended PSDUP”) has been placed on the warrant for the 2009 Fall Special Town Meeting as Article 2.

The Applicant committed to specific traffic mitigation measures as part of the Original PSDUP (as set forth on Exhibit 1 annexed hereto). The Amended PSDUP proposes additional mitigation measures.

The Applicant and the Town, acting by and through the Board of Selectmen, entered into a Memorandum of Understanding in May of 2009 (the “Original MOU”) that established certain mitigation provisions, and this Amended and Restated Memorandum of Understanding (hereinafter, the “MOU”) amends and restates the terms thereof in conjunction with the consideration of the Amended PSDUP by Special Town Meeting and, if approved, to be submitted to the Attorney General of the Commonwealth of Massachusetts for approval. Except as specifically set forth otherwise herein, this MOU shall in no way negate the prior obligations and commitments of the Applicant as previously approved by Town Meeting in the Original PSDUP.

**I. Traffic Related Obligations**

- a. Financial Contributions Toward Traffic Mitigation Stabilization and Transportation Demand Management/Public Transportation Stabilization Funds

The Applicant shall pay to the Town for deposit into the Traffic Mitigation Stabilization Fund and/or the Transportation Demand Management/Public Transportation Stabilization Fund mitigation fees in accordance with the following sections.

- b. Projects to be Funded Through Traffic Mitigation Stabilization and Transportation Demand Management/Public Transportation Stabilization Funds

The aforesaid financial contributions shall be utilized to enhance future traffic operations and benefit the Town, the neighborhood, and the Property, at certain locations and via certain improvements that are related to the Applicant’s use of the Property, which may include, but are not limited, to the following:

- Design/Construct traffic calming devices along Shade Street;
- Design/Construct a traffic signal at Spring Street/Hayden Avenue intersection;
- Design/Construct a traffic signal at Spring Street/Concord Avenue intersection;
- Design/Construct sidewalks along Hayden Avenue intersection; and
- Design/Construct improvements/signal at Waltham Street/Hayden Avenue intersection.

The Town shall determine in its sole discretion the traffic and transportation mitigation improvements and/or services for which the funds shall be expended.

## **II. Measures commencing after approval of the Amended PSDUP by the Attorney General of the Commonwealth of Massachusetts**

### **a. Traffic Master Plan**

The Applicant shall, within thirty (30) days of approval of the Amended PSDUP by the Attorney General, contribute Sixty-Five Thousand (\$65,000) Dollars to the Town of Lexington to be deposited in the Traffic Mitigation Stabilization Fund to allow the Town, acting by and through the Board of Selectmen and their designees, to undertake the preparation of a traffic plan of the Spring Street and Hayden Avenue Corridors (hereinafter, the “Traffic Plan”). The purpose of this planning effort shall be to evaluate and address transportation issues that the corridor currently faces and will likely encounter in the future based upon actual and projected development and the attendant traffic impacts. The Traffic Plan shall provide a dynamic framework to plan and implement traffic improvements as development proceeds. Concurrent with the financial contribution, the Applicant shall provide the Town with a Scope of Work outlining the purpose of the traffic evaluation to allow the Town to expeditiously engage a qualified Traffic Engineering firm to undertake this analysis. The results of this analysis shall be provided to the Applicant upon its request.

If within three (3) years of the receipt of the funding for the Traffic Plan, the Town neglects to engage a qualified Traffic Engineering Firm to commence the analysis, the Town shall use diligent efforts to reimburse said funds to the Applicant, subject to due authorization by Town Meeting, and the obligations under this provision shall cease and shall no longer be in effect, unless extended by the mutual written agreement of the parties. The Applicant shall not unreasonably withhold its consent to any request from the Town for an extension of time to complete this analysis.

b. Shade Street Traffic Calming

To assist in the study of Shade Street traffic calming strategies, the Applicant shall, within thirty (30) days of approval of the Amended PSDUP by the Attorney General, contribute Fifteen Thousand (\$15,000) Dollars to the Town of Lexington.

**III. Measures commencing prior to issuance of building permit for new building**

- a. The Applicant shall, prior to issuance of a building permit for any new building that adds net square footage to the Property in excess of 505,800 s.f. (the amount approved in the Original PSDUP), contribute Six Hundred Thousand (\$600,000) Dollars to fund traffic and transportation mitigation for the benefit of the Town and the project. The contributed monies shall be disbursed as follows:
  - i. Five Hundred Thousand (\$500,000) Dollars shall be contributed to the Traffic Mitigation Stabilization Fund to be disbursed by the Town.
  - ii. One Hundred Thousand (\$100,000) Dollars shall be contributed to the Transportation Demand Management/Public Transportation Stabilization Fund.

**IV. Measures commencing prior to issuance of certificate of occupancy for second new building**

Prior to the issuance of a certificate of occupancy for the second new building that may be constructed on the Property (the “Second New Building”), the Applicant shall pay to the Town an additional amount equal to the product of \$1,900 multiplied by the number of parking spaces in excess of 2,260 that are created on the Property or for which the capacity has been created at that time. For the purposes of this MOU, capacity for parking spaces is created when a parking area or structure is paved or constructed, regardless of whether the spaces are actually striped or otherwise delineated.

The payment hereunder shall be distributed as follows:

- i. The first One Hundred Thousand (\$100,000) Dollars shall be contributed to the Transportation Demand Management/Public Transportation Stabilization Fund.
- ii. The balance shall be contributed to the Traffic Mitigation Stabilization Fund.

**V. Measures commencing upon creation of additional parking spaces**

If any parking spaces are created or the capacity for any parking spaces is created on the Property at any time after the issuance of the aforementioned certificate of occupancy for the Second New Building, the Applicant shall pay to the Town an additional amount equal to the product of \$1,900 multiplied by the number of said parking spaces as well as the capacity

therefor. Any payments hereunder shall be deposited in the Traffic Mitigation Stabilization Fund to fund traffic and transportation mitigation for the benefit of the Town and the project.

## **VI. Additional Traffic Mitigation Obligations**

### **a. Transportation Coordinator**

The Applicant, as part of the Original PSDUP, has appointed a site transportation coordinator who is responsible to implement a variety of employee based transportation demand management opportunities. The Applicant agrees that the coordinator shall, annually, submit to the Town Planning Director and Transportation Safety Advisory Council (TSAC), for their review and comment, reports as to the strategies employed and their effectiveness to ensure compliance with the requirements of the Original PSDUP.

In addition, the Applicant will work with the Town to explore opportunities to provide the public with service from the Property (or a location nearby) to Alewife Station via shuttle or bus.

### **b. Grant Application Assistance**

The Applicant shall reasonably cooperate with and support the Town in its application(s) to obtain grant financing or public monies for public infrastructure improvements in South Lexington (including those listed above), which may include applications to the Massachusetts Opportunity Relocation and Expansion (MORE) Program, Public Works and Economic Development (PWED) Program, Infrastructure Investment Incentive (I-Cubed) Program, and other programs offered by the Commonwealth.

## **VII. Additional Related Obligations**

The Amended PSDUP, and any subsequent DSDUP, shall include the following conditions which shall be completed in accordance with said plans and to the satisfaction of the Building Commissioner:

### **a. Sustainable Design and Construction**

Section VIIa of the Original MOU is hereby deleted, and the terms of the Amended PSDUP shall control and govern sustainable building, design and development standards and obligations applicable to the property.

### **b. Tax Increment Financing**

As a precondition to the development of Building 100 on the Property, the parties to that certain Tax Increment Financing Agreement by and between the Town, the Applicant (Patriot Partners Lexington, LLC) and Shire Human Genetic Therapies Inc. ("Shire") dated October 2007 (the "TIF") agree to amend the terms and provisions of the TIF with the effect that the value of Building 100 shall be fully

taxable and shall not be eligible for TIF exemptions from taxation by the Town unless the Town approves a new Tax Increment Financing for this new parcel. **[Shire must consent specifically to this paragraph and agree to this TIF language.]**

#### **VIII. Additional Provisions**

- a. Consumer Price Index Adjustment. The Applicant agrees that, beginning three (3) years from the date of the Attorney General approval of the vote of Special Town Meeting on the Amended PSDUP (the “Initial CPI Adjustment Date”), the \$1,900 figures identified in Sections IV and V above shall be adjusted annually for inflation or deflation based upon changes in the Consumer Price Index for all Urban Consumers, Boston-Brockton-Nashua, All Items (1982-1984 =100), published by the Bureau of Labor Statistics, U.S. Department of Labor (“CPI”); provided, however, that these figures shall never be reduced below the \$1,900 base established herein. The first such adjustment shall be completed on the Initial CPI Adjustment Date based on changes in CPI for the preceding year. If the Bureau of Labor Statistics should cease to publish the CPI in its present form and calculated on the present basis, a comparable index or an index reflecting changes in prices determined in a similar manner shall reasonably be designated by the Town in substitution therefor. The CPI for any year relevant to the application of this definition shall be that published by the Bureau of Labor Statistics for such year.
- b. Binding Effect. This MOU shall be binding on and inure to the benefit of the Applicant and its successors and assigns as owners of the Property and shall run with the Property as an encumbrance thereto. This MOU shall also be binding on and inure to the benefit of successors and assigns of the Town. This MOU is for the benefit of the Applicant and the Town, and it may be enforced by any remedy provided at law or in equity. This MOU and the Lexington Zoning Bylaws shall be construed in such a way as to harmonize any conflicting provisions to the greatest extent reasonably possible, but in the event of any irreconcilable conflict between this MOU and any provision in the Bylaw, the provisions of the Bylaw shall control (subject always to the provisions of General Laws, Chapter 40A, as amended) as denoted in the Original and Amended PSDUP. The Applicant shall promptly record a notice of this MOU with the Middlesex South Registry of Deeds.
- c. Applicant’s Existence and Authority. The Applicant is a Massachusetts limited liability company duly formed, validly existing and in good standing under the laws of the Commonwealth of Massachusetts.

This MOU constitutes a valid and legally binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms, and neither the execution, delivery or performance of this MOU nor compliance herewith conflicts with or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (i) the organization documents of the

Applicant, (ii) any law or any order, writ, injunction or decree of any court or governmental authority, or (iii) any agreement or instrument to which the Applicant is a party by which it is bound.

- d. Cooperation. The Applicant hereby agrees to continue to work cooperatively with the Town on an ongoing basis to implement both the specific provisions and the intent and purposes of this MOU.
- e. Time is of the Essence. Time shall be of the essence of this MOU.
- f. Permitting. The execution and delivery of this MOU does not constitute an agreement by the Town that any necessary permit or approval for the project will in fact be granted. Any provision of this MOU may be incorporated into, and made a condition of any permit or approval granted by the Town.
- g. Amendment of MOU. This MOU may not be amended, modified or terminated except by a written instrument executed by the Applicant and by a majority of the Board of Selectmen.
- h. Enforcement; No Waiver. The failure of the Town or the Applicant to enforce this MOU shall not be deemed a waiver of the Town's or the Applicant's right to do so thereafter. If any provision of this MOU or its applicability to any person or circumstances shall be held invalid, the remainder thereof, or the application to other persons shall not be affected.
- i. Severability. The invalidity of any provision of this MOU as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

- j. Applicable Law. This MOU shall be governed by and according to the laws of the Commonwealth of Massachusetts, as amended from time to time. Any action brought by the Town hereunder may be brought in the Superior Court in and for the County of Middlesex, and the Applicant hereby agrees to the jurisdiction of such court.

Signed:

Patriot Partners Lexington LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Its Manager

200 Patriot Way LLC

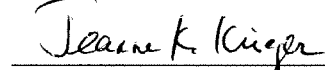
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By: \_\_\_\_\_  
Its Manager


Consent to Paragraph VII.b:  
Shire Human Genetic Therapies Inc.

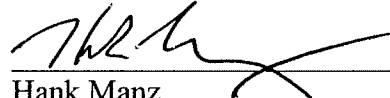
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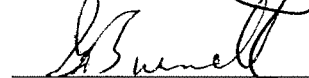
TOWN OF LEXINGTON  
BOARD OF SELECTMEN

  
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Norman P. Cohen, Chairman

  
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Jeanne K. Krieger

  
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Peter C.J. Kelley

  
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Hank Manz

  
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George A. Burnell

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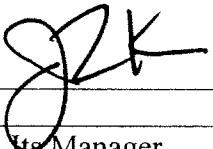
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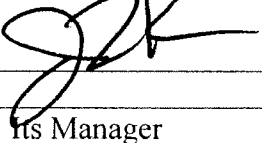
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Patriot Partners Lexington LLC

By:   
Its Manager

200 Patriot Way LLC

By:   
Its Manager

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Hank Manz

\_\_\_\_\_  
George A. Burnell

Consent to Paragraph VII.b:  
Shire Human Genetic Therapies Inc.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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Signed:

Patriot Partners Lexington LLC

TOWN OF LEXINGTON  
BOARD OF SELECTMEN

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Its Manager

\_\_\_\_\_  
Norman P. Cohen, Chairman

200 Patriot Way LLC

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Jeanne K. Kreiger

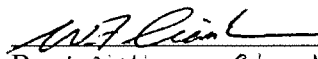
By: \_\_\_\_\_  
Its Manager

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Peter C.J. Kelley

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Hank Manz

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George A. Burnell

Consent to Paragraph VII.b:  
Shire Human Genetic Therapies Inc.

  
By: William Ciambra  
Its: SVP, Technical Operations

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